

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1980.

621

CHARLES F. CONSAUL AND IDA M. MOYERS, ADMINIS-  
TRATORS OF THE ESTATE, OF GILBERT MOYERS,  
DECEASED, APPELLANTS,

*vs.*

HORACE S. CUMMINGS, ADMINISTRATOR OF THE  
ESTATE OF GEORGE B. EDMONDS, DECEASED.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED JANUARY 18, 1909.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1909.

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# In the Court of Appeals of the District of Columbia.

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No. 1980.

CHARLES F. CONSAUL ET AL., Adm'rs, &c., Appellants,  
*vs.*

HORACE S. CUMMINGS, Adm'r, &c.

---

*a* Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of Estate of George B.  
Edmonds, Dec'd, Complainant,

*vs.*

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Estate  
of Gilbert Moyers, Dec'd, Defendants.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of  
Columbia, at the City of Washington, in said District, at the times  
hereinafter mentioned, the following papers were filed and proceed-  
ings had in the above-entitled cause, to wit:

1 *Mandate.*

Filed March 28, 1908.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable  
the Justices of the Supreme Court of the District of Co-  
[SEAL.] lumbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia,  
before you, or some of you, in a cause between Horace S. Cummings,  
Administrator of the Estate of George B. Edmonds, deceased, com-  
plainant, and Charles F. Consaul and Ida M. Moyers, Administrators  
of the Estate of Gilbert Moyers, deceased, defendants, Equity No.  
20,802, wherein the decree of the said Supreme Court entered in  
said cause on the 8th day of January, A. D. 1907, is in the following  
words, viz:

1—1980A

"This cause coming on to be heard upon the report of the Auditor of the Court filed May 1st, 1906 and the exceptions thereto of the complainant and the defendants; upon the report of the Auditor filed December 21st, 1906, and the exceptions thereto of the defendants, and upon the report of the Auditor filed January 4th, 1907, and the exceptions thereto of the complainant, and the parties having consented to the immediate hearing of said exceptions it is, by the court, this 8th day of January, 1907, adjudged, ordered and decreed as follows, to wit:

"1. That each and every of said exceptions be, and the same is hereby, overruled, and said reports be, and the same are hereby, finally ratified and confirmed.

"2. That the complainant, as shown by the said report of the Auditor filed May 1, 1906, is entitled to recover from the defendants, as administrators of the estate of Gilbert Moyers, the sum of \$12,813.74, being the sum found to be due the complainant, as of September 16, 1899, namely, \$8,906.68, with interest thereon to the date hereof; also the sum of \$311.72, being the sum found to be due the complainant on account of the fee collected by defendants' intestate, Gilbert Moyers, in the case of Joel C. Johnson, Administrator of Richard W. Johnson, namely, \$246, with interest thereon from July 25, 1902, to the date hereof; and also the sum of \$964.99 being the sum found to be due the complainant by the said report of the Auditor filed December 21st, 1906, or a total of \$14,090.45, with interest until paid.

"3. That of the sum of \$480.10 remaining of the \$682 heretofore retained by the receivers herein pending the determination of the claim of George M. Barber, intervenor, as shown by the said report of the Auditor filed January 4th, 1907, after payment of the sum of \$201.90 to said Barber as directed by the order of the Court made December 26th, 1906, the complainant is entitled to one-half, namely, \$240.05 and the defendants to one-half, namely, \$240.05.

"4. That of the balance of the sum of \$6,430.82, in the hands of said receivers, as shown by said report of said Auditor filed May 1, 1906, after deducting \$152, costs of references and also said \$682 retained by said receivers distribution of which is hereinbefore provided for, which said balance amounts to \$5,596.82, the complainant, as shown by said last mentioned report, is entitled to the sum of \$1,896.05 and the defendants to the sum of \$3,700.77.

"5. That the said receivers be, and they are hereby directed to pay over forthwith to the said complainant the sums of \$1,896.05 and \$240.05 found to be due by the Auditor's reports filed May 1, 1906, and January 4th, 1907, and also the sums of \$3,700.77 and \$240.05 found to be due the defendants by said last mentioned reports, which said sums of \$3,700.77 and \$240.05 shall, when paid, be credited upon the sums of \$14,090.45, due the complainant from the defendants according to the provisions of Paragraph 2 hereof, leaving a balance due the complainant from the defendants on account thereof of \$10,149.63, which last mentioned sum the com-

plainant shall recover from the defendants as administrators as aforesaid, as of the date hereof, together with the costs of suit, to be taxed by the Clerk, and have execution therefor as at law.

“6. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this Court from time to time for an order or orders for the payment of  
4 such other and further sums of money as have or shall come into the hands of the defendants, as administrators of Gilbert Moyers, deceased, on account of the partnership heretofore adjudged to have existed between the said deceased and the said George B. Edmonds, deceased, or into the hands of the said receivers, and which may or shall be due the complainant, as administrator of said George B. Edmonds, by reason of said partnership.

HARRY M. CLABAUGH,  
*Chief Justice.*”

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our Lord one thousand nine hundred and eight, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed in all respects save as regards (1) the error found in the equal division of the fee collected by Consaul and Moyers in the case of Lucy A. Caldwell, (2) the one charged in case of John W. Fletcher, and (3) the mistake of the Auditor in not eliminating from the last statement of the  
5 account the item of \$526.25 improperly charged on account of fee collected in the case of Johnson, Administrator of Heard. As to these three items it will be reversed. The costs will be taxed one-half to each party respectively; and that the said defendants Charles F. Consaul and Ida M. Moyers, Administrators of Gilbert Moyers, deceased, recover against the said complainant One hundred and seventy-eight dollars and eighty-two cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Supreme Court with direction to restate the account to the date of the decree, correcting the error aforesaid and ascertaining the proper proportion of the fee collected by Consaul and Moyers in the Caldwell case, to be allowed to Gilbert Moyers, and divided with Edmonds, as well as correcting the charge made of the fee in the case of John W. Fletcher.

March 10, 1908.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 28th day of March in the year of our Lord one thousand nine hundred and eight.

HENRY W. HODGES,  
*Clerk of the Court of Appeals of the District of Columbia.*

*Costs of Defendants.*

Clerk .....	\$19.57
Printing Record .....	\$159.25
	<hr/>
	\$178.82

*Mandate.*

Filed March 28, 1908.

UNITED STATES OF AMERICA, ss:

[SEAL.] The President of the United States of America to the  
Honorable the Justices of the Supreme Court of the  
District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Horace S. Cummings, Administrator of the Estate of George B. Edmonds, deceased, complainant, and Charles F. Consaul and Ida M. Moyers, Administrators of the Estate of Gilbert Moyers, deceased, defendants; Equity No. 20,802, wherein the decree of the said Supreme Court entered in said cause on the 8th day of January, A. D. 1907, is in the following words, viz:

"This cause coming on to be heard upon the report of the Auditor of the Court filed May 1st, 1906, and the exceptions thereto of the complainant and the defendants; upon the report of the Auditor filed December 21st, 1906, and the exceptions thereto of the defendants, and upon the report of the Auditor filed January 4th, 1907, and the exceptions thereto of the complainant, and the parties having consented to the immediate hearing of said exceptions it is, by the court, this 8th day of January, 1907, adjudged, ordered  
7 and decreed as follows, to wit:

"1. That each and every of said exceptions be, and the same is hereby, overruled, and said reports be, and the same are hereby, finally ratified and confirmed.

"2. That the complainant, as shown by the said report of the Auditor filed May 1, 1906, is entitled to recover from the defendants, as administrators of the estate of Gilbert Moyers, the sum of \$12,813.74, being the sum found to be due the complainant, as of September 16, 1899, namely, \$8,906.68, with interest thereon to the date hereof; also the sum of \$311.72, being the sum found to be due the complainant on account of the fee collected by defendants' intestate, Gilbert Moyers, in the case of Joel C. Johnson, Administrator of Richard W. Johnson, namely, \$246, with interest thereon from July 25, 1902, to the date hereof; and also the sum of \$964.99

being the sum found to be due the complainant by the said report of the Auditor filed December 21st, 1906, or a total of \$14,090.45, with interest until paid.

"3. That of the sum of \$480.10 remaining of the \$682 heretofore retained by the receivers herein pending the determination of the claim of George M. Barber, intervenor, as shown by the said report of the Auditor filed January 4th, 1907, after payment of the sum of \$201.90 to said Barber as directed by the order of the court made December 26th, 1906, the complainant is entitled to one-half, namely, \$240.05 and the defendants to one-half, namely, \$240.05.

8 "4. That of the balance of the sum \$6,430.82, in the hands of said receivers, as shown by said report of said Auditor filed May 1, 1906, after deducting \$152, costs of references and also said \$682 retained by said receivers distribution of which is hereinbefore provided for, which said balance amounts to \$5,596.82, the complainant, as shown by said last mentioned report, is entitled to the sum of \$1,896.05 and the defendants to the sum of \$3,700.77.

"5. That the said receivers be, and they are hereby directed to pay over forthwith to the said complainant the sums of \$1,896.05 and \$240.05 found to be due by the Auditor's reports filed May 1, 1906, and January 4th, 1907, and also the sums of \$3,700.77 and \$240.05 found to be due the defendants by said last mentioned reports, which said sums of \$3,700.77 and \$240.05 shall, when paid, be credited upon the sum of \$14,090.45, due the complainant from the defendants according to the provisions of Paragraph 2 hereof, leaving a balance due the complainant from the defendants on account thereof \$10,149.63, which last mentioned sum the complainant shall recover from the defendants, as administrators as aforesaid, as of the date hereof, together with the costs of suit, to be taxed by the Clerk, and have execution therefor as at law.

9 "6. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this Court from time to time for an order or orders for the payment of such other and further sums of money as have or shall come into the hands of the defendants, as administrators of Gilbert Moyers, deceased, on account of the partnership heretofore adjudged to have existed between the said deceased and the said George B. Edmonds, deceased, or into the hands of the said receivers, and which may or shall be due the complainant, as administrator of said George B. Edmonds, by reason of said partnership.

HARRY M. CLABAUGH,  
*Chief Justice.*"

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our Lord one thousand nine hundred and eight, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs; and that the said defendants recover against the said complainant, Horace S. Cummings, Administrator of George B. Edmonds, deceased, for their costs herein expended and have execution therefor.

March 10, 1908.

10 You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 28th day of March in the year of our Lord one thousand nine hundred and eight.

*Costs of Defendants.*

Clerk .....	\$
Attorney .....	\$ Paid.
Printing Record .....	\$

HENRY W. HODGES,  
*Clerk of the Court of Appeals  
of the District of Columbia.*

Supreme Court of the District of Columbia.

WEDNESDAY, April 29, 1908.

The Court resumes its session pursuant to adjournment, Mr. Chief Justice Clabaugh presiding.

No. 20802, Equity Docket 47.

HORACE S. CUMMINGS, Administrator, etc.,  
vs.

CHARLES F. CONSAUL ET AL., Administrators, etc.

Upon consideration of the mandate of the Court of Appeals of the District of Columbia upon the appeal to that Court of the said defendants, it is by the Court this 29th day of April, 1908, ordered that the said cause be and the same is hereby re-referred to the Auditor with directions to restate the account of the parties in accordance with the directions of said mandate and to report to  
11 this Court accordingly; said re-statement of said account to be made upon the testimony already taken in said cause and

such additional testimony as either of the parties hereto may adduce.

HARRY M. CLABAUGH,  
*Chief Justice.*

*Auditor's Report.*

Filed June 2, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS ET AL.

*vs.*

CHARLES F. CONSAUL ET AL.

This cause is referred to me to restate certain of the accounts in accordance with the opinion and decree of the Court of Appeals. After due notice I proceeded with the reference.

In Schedule A herewith I have restated the Auditor's accounts filed May 1, 1906, taking the amount therein stated as due the complainant as of September 16, 1899 and deducting for error in a charge in the matter of the claim of R. M. Johnson administrator of Heard and on the balance computing interest from the said date September 16, 1899 to the date of the decree in this Court, being January 8, 1907. To this I add as stated in the said decree \$246 being fee in the case of Joel C. Johnson administrator and computing interest thereon from July 25, 1902 to January 8, 1907.

12 I then add the sum of \$614.99 as shown in Schedule A No. 2 herewith which is a restatement of the Auditor's accounts of December 21, 1906. This restatement is made in compliance with the opinion and decree of the Court of Appeals Cause No. 1778 relating to the claim of Lucy A. Caldwell. In the Auditor's report of December 21, 1906 the fee in the said claim amounting to \$1050 was equally divided between the complainant and defendant. The firm of Moyers and Consaul as attorneys presented a claim in that reference for a separate allowance to them for services rendered in the prosecution of the said claim after the death of Gilbert Moyers, which demand was not allowed in the Auditor's Report. The decree of the Court of Appeals directs that a proper and reasonable allowance be made to the said firm of attorneys for their said services and upon the testimony heretofore taken and found in the record of this cause I have allowed to the said attorneys two-thirds of the entire fee being \$700. This allowance leaves the sum of \$350 to be divided between the complainant and defendants.

This schedule shows the amount due to the complainant as so corrected as of the date of the said decree January 8, 1907 subject to distribution shown by Schedule B. The latter schedule is a restatement of the Auditor's report on the receiver's account filed January

5, 1904 in which a correction is made of the amount of fee received in the claim of John W. Fletcher. This restatement shows the correct balance in the hands of the receivers at the date of the original report with its distribution, showing the sum of \$3,648.80  
 13 as the share of the estate of Gilbert Moyers. This amount together with the sum of \$240.05 shown by the Auditor's report of January 4, 1907 are carried to Schedule A to be paid by the receivers to the complainant and credited on the indebtedness of the defendants to the complainant, the account showing the balance due the complainant after such division and application.

JAS. G. PAYNE, *Auditor.*

### SCHEDULE A.

#### *Re-statement of the Account Filed May 1st, 1906.*

Amount herein stated as due the complainant as of September 16th 1899.....	\$8,906.68
Deduct for error in charge against defendant in report of August 20th 1902 of fee in case R. M. Johnson, Administrator of Heard, one-half of \$1052.50.....	526.25
	<hr/>
	\$8,380.43
Interest from September 16th 1899 to January 8th 1907.	3,674.90
One-half of fee collected by Gilbert Moyers in the case of Joel C. Johnson, administrator. \$246.00	
Interest from July 25, 1902 to January 8th 1907.....	65.72
	<hr/>
	311.72
Per report of Auditor filed December 21, 1906.....	614.99
	<hr/>
	\$12,982.04
14	\$12,982.04
To be paid by the Receivers per re-statement of Receivers' account in schedule "B" herewith.....	\$3,648.80
To be paid by Receivers per Auditor's report of January 4th 1907.....	240.05
	<hr/>
	3,888.85
	<hr/>
Balance due complainant with interest from January 8, 1907.....	\$9,093.19

JAS. G. PAYNE, *Auditor.*

## SCHEDULE A, No. 2.

*Re-statement of Auditor's Account of December 21st, 1906.*

Fee collected in claim of Jane Edge.....	\$607.66
Fee collected in the claim of Herbert Smith.....	272.33
Fee collected in claim of Lucy A. Caldwell.....	350.00
	<hr/>
	\$1,229.99

Share of the complainant:

One-half .....	\$614.99
Carried to schedule "A."	

JAS. G. PAYNE, Auditor.

15

## SCHEDULE B.

*Re-statement of Auditor's Report on Account of Receivers Filed January 5th, 1904.*

DR.

To Amount of fees collected per account of Auditor of May 20th 1903.....	\$9,681.68
" Amount of fee received in claim of John W. Fletcher.....	115.50
	<hr/>
	\$9,797.18

CR.

By Expenditures as per said account of May 20th 1903.....	\$2,490.60
" Commissions per said account.....	968.16
" On fee in claim of John W. Fletcher...	11.55
	<hr/>
	3,470.31
	<hr/>
	\$6,326.87
Costs of reference.....	\$152.00
Reserved in case of Thomas Kidd.....	682.00
	<hr/>
	834.00
	<hr/>
	\$5,492.87

To Horace S. Cummings, Administrator One half.....	\$2,746.43
Less expenses and payments to attorneys.....	902.36
	<hr/>
	\$1,844.07

To Estate of Gilbert Moyers, one-half.....	\$2,746.44
Add from above share.....	902.36
	<hr/>
	3,648.80
	<hr/>
	5,492.87

JAS. G. PAYNE, Auditor.

CUMMINGS

vs.

CONSAUL.

FRIDAY, *May* 1, 1908—10.30 a. m.

Hearing pursuant to notice.

Present: Mr. Tucker for the complainants and Mr. Consaul for the defendants.

Mr. CONSAUL: Representing the defendant, this present reference being for the purpose of re-stating the account in accordance with the terms of the mandate of the Court of Appeals and no further inquiry being required save as to the relative values of the services performed in the case of claim of Eaton executrix of Caldwell, the defendants now state that they desire to submit no further evidence relative to the services rendered in the Caldwell case.

Mr. TUCKER: We have no further evidence to offer on this subject.

Argument.

Adjourned.

*Defendant's Exceptions to Report of Auditor.*

Filed June 9, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of Estate of George B. Edmonds, Dec'd, Complainant,

vs.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Estate of Gilbert Moyers, Dec'd, Defendants.

Come now the defendants, by their solicitors, and except to the report of the Auditor, filed herein on the second day of June, 1908, and for grounds of exceptions thereto say that the Auditor erred in the following particulars, to-wit:

I. It was error to hold that the special partnership existing between Gilbert Moyers, the intestate of the defendant, and George B. Edmonds, the intestate of the complainant, continued after the death of said Edmonds, in October, 1896.

II. In view of the death of said Edmonds, in October, 1896, prior to collection of any claims alleged to have been covered by said special partnership (save that of Susan Merrill) it was error

18 not to hold and decide that the utmost measure of recovery by the complainant against the defendant is:

(a.) One-half of the fee collected in the Merrill case *if* it was a partnership claim.

(b.) One-half the reasonable value of services rendered by the special partnership of Moyers and Edmonds, *prior* to dissolution of

said special partnership by death of Edmonds, in all other partnership claims collected by Gilbert Moyers, after deducting therefrom one-half the expenses incurred by Gilbert Moyers in the prosecution of the partnership business.

III. In view of the facts stated in the first specification, it was error to hold that after the dissolution of said special partnership by death of Edmonds, it became the duty of Gilbert Moyers to indefinitely continue the practice of law, so far as concerned the business of said special partnership, for the joint benefit of himself and the estate of the deceased special partner.

IV. It appearing from the testimony that Edmonds' contribution to the special partnership, aside from personal services, consisted of his powers of attorney from various claimants, and his fee contracts with said claimants, it was error not to hold that said powers of attorney died with the death of Edmonds, thereby removing Edmonds' contribution to said special partnership, which was dissolved by his death.

V. It was error not to hold, if the relation between Gilbert Moyers and George B. Edmonds was that of employment, that such  
19 employment ceased with the death of the employer, Edmonds.

VI. It was error not to hold that Gilbert Moyers, during his lifetime, did abandon the prosecution of the Edge and Smith claims, and that such abandonment terminated his connection therewith and terminated the connection of the estate of Edmonds therewith.

VII. It was error, assuming the complainant to be entitled to take anything in this suit, to hold that the total sum paid to W. A. Montgomery for services as local counsel in the claim of the executors of Kidd, should not be deducted from the total fee in said claim, before any division of the fee between complainant and the defendants.

VIII. It was error to hold that the fee paid to local counsel in the claim of Isaiah Beans, being twenty-five per cent. of collection, was an unreasonable fee, and error to hold that the fee so paid to local counsel in said claim in excess of one hundred dollars, should be charged wholly against the share of Moyers in said fee.

IX. It was error to hold that the claims of Ernest Neill, administrator of Joseph H. Egner; that of William Goddard, and that of Joel C. Johnson, administrator of Richard W. Johnson, or any of them, were claims within the operation of the special partnership  
between Moyers and Edmonds.

20 X. It was error to allow to complainant any interest on any moneys found to be due him, for any period prior to the rendering of a decree in this case which shall become final, no interest being properly allowable upon any balance found due upon a partnership accounting until the balance has been struck, and there being no balance struck in this case until the rendering of such a final decree.

XI. It was error to hold that the defendants, in their individual capacity as members of the firm of Moyers and Consaul, are accountable to the complainant for any portion of the fee received by them,

for services rendered in and about the collection of the claim of estate of Lucy A. Caldwell, under a direct employment by the claimant, after the death of Gilbert Moyers.

XII. It was error, assuming the complainant to be entitled to any share of the fee earned and collected as above set forth in said Caldwell claim, to allow to the partnership of Moyers and Edmonds one-third of the total fee received by said firm of Moyers and Consaul, the evidence showing that to the firm of Moyers and Consaul was due the credit for winning said claim, and also showing that to their associate counsel, R. W. Haynes, was due to credit for securing the reference of said claim to the Court of Claims, by Congress.

21 XIII. It was error, in holding complainant to be entitled to share in said Caldwell fee, to discriminate between the defendants, as the firm of Moyers and Consaul, and their associate counsel, R. W. Haynes, and to hold that said firm of Moyers and Consaul should be compelled to pay to complainant a portion of the fee earned and collected by them, while holding that said Haynes, who controlled the attorneyship in said case, is entitled to retain all of the fee collected by him, the employment of said Haynes and of said firm of Moyers and Consaul being by the same instrument, executed after the death of Gilbert Moyers.

Wherefore, defendants except to said report of the Auditor and pray that the same be not approved.

CHAS. F. CONSAUL,  
IDA M. MOYERS,

*Defendants,*

By COLE AND DONALDSON,  
C. F. C.,

CHAS. F. CONSAUL,  
*Solicitors.*

Service of copy of above exceptions acknowledged this Eighth day of June, 1908.

TUCKER & KENYON,  
*Solicitors for Complainant.*

22

*Decree.*

Filed November 16, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 20802.

HORACE S. CUMMINGS, Administrator, Complainant,

*vs.*

CHARLES F. CONSAUL ET AL., Administrators, Defendants.

This cause coming on to be heard upon the report of the Auditor of the Court filed June 2, 1908, re-stating the account of the parties

to the date of the decree of this Court of January 8, 1907, as directed by the mandate of the Court of Appeals of the District of Columbia filed March 2, 1908, and upon the exceptions of the defendants to said report of the Auditor of June 2, 1908; and it appearing to the Court that said account has been re-stated in accordance with the directions of said mandate, it is by the Court, this 16th day of November, 1908, adjudged, ordered and decreed as follows, to wit:

1. That each and every of said exceptions be, and the same is hereby overruled, and said report of the Auditor filed June 2, 1908, be and the same is hereby finally ratified and confirmed.

2. That the complainant, as shown by said report of the Auditor filed June 2, 1908, is entitled to recover from the defendants, 23 as administrators of the estate of Gilbert Moyers, the sum of \$12,982.04 with interest at the rate of 6% per annum from January 8, 1907, until paid, said principal sum and interest amounting as of the date hereof to \$——.

3. That of the sum of \$480.10 remaining of the \$680 heretofore retained by the receivers herein pending the determination of the claim of George M. Barber, intervenor, as shown by the report of the Auditor filed January 4, 1907, after payment of the sum of \$201.90 to the said Barber as directed by the order of this Court made December 26, 1906, the complainant is entitled to one-half, namely, \$240.05, and the defendants to one-half, namely, \$240.05.

4. That of the \$5,492.87 in the hands of the receivers as shown by said report of the Auditor of June 2, 1908, for distribution among the parties hereto, the complainant is entitled to the sum of \$1,844.07 and the defendants to the sum of \$3,648.80.

5. That the receivers be, and they are hereby directed to pay forthwith to said complainant the aforesaid sums of \$1,844.07 and \$240.05 found to be due him as aforesaid, and also to pay to him the sums aforesaid of \$3,648.80 and \$240.05 found to be due the defendants as aforesaid, which said sums of \$3,648.80 and \$240.05, when paid, shall be credited upon the sum to which the complainant is declared by the provisions of paragraph 2 hereof to be entitled to receive from the defendants; and the difference between said last mentioned sum of the amounts hereby ordered to be credited thereon, the complainant shall recover from the defendants as ad- 24 ministrators as aforesaid, together with the costs of this suit to be taxed by the clerk, and have execution therefor as at law.

6. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this Court from time to time for an order or orders for the payment of such other and further sums of money as have or shall come into the hands of the defendants, as administrators of Gilbert Moyers, deceased, on account of the partnership heretofore adjudged to have existed between the said deceased and the said George B. Edmonds, deceased, or into the hands of the said receivers, and which may or shall be due the complainant as administrator of said George B. Edmonds, by reason of said partnership.

WRIGHT.

From the foregoing decree the defendants in open court pray an appeal to the Court of Appeals of the District of Columbia, which is hereby allowed, and the penalty of the appeal bond, if one is given to operate as a supersedeas, is hereby fixed at Fifteen thousand dollars (\$15,000), and if it is to act as a bond for costs only, then in the sum of Two hundred dollars.

WRIGHT.

*Memorandum.*

December 9, 1908.—Appeal bond filed.

25      *Directions to Clerk for Preparation of Transcript of Record.*

Filed January 6, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Adm'r of Geo. B. Edmunds, Dec'd, Complainant,

*v.*

CHARLES F. CONSAUL and IDA M. MOYERS, Adm'rs of Estate of Gilbert Moyers, Dec'd, Defendants.

The Clerk of Supreme Court of District of Columbia:

You are hereby requested to include in the transcript of record on appeal, the following papers, to wit:

1. Mandates of Court of Appeal-, filed March 28, 1908.
2. Order filed April 29, 1908, referring cause to Auditor for proceedings pursuant to mandate.
3. Auditor's report filed June 2, 1908.
4. Defendants' exceptions, filed June 9, 1908, to Auditor's report.
5. Final decree, filed November 16, 1908, with order allowing appeal and fixing bond.
6. Certificate of Clerk showing filing of appeal and supersedeas bond filed Dec. 9, 1908.

R. GOLDEN DONALDSON,  
CHAS. F. CONSAUL,  
*Solicitors for Defendants.*

26      Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 25, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is

made part of this transcript, in cause No. 20802, Equity, wherein Horace S. Cummings, Administrator of Estate of George B. Edmonds, deceased, is Complainant and Charles F. Consaul and Ida M. Moyers, Administrators of Estate of Gilbert Moyers, deceased, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of January, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1980. Charles F. Consaul *et al.*, adm'rs, &c., appellants, *vs.* Horace S. Cummings, adm'r, &c. Court of Appeals, District of Columbia. Filed Jan. 18, 1909. Henry W. Hodges, clerk.